

APPEAL NO. 182528  
FILED JANUARY 11, 2019

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 22, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury sustained on (date of injury), extends to herniated nucleus pulposus (HNP) at C5-6 and C6-7, central canal stenosis at C5-6 and C6-7, cervical radiculitis, and cervicgia; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 20, 2018; and (3) the claimant's impairment rating (IR) is 7%. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

The ALJ's determination that the compensable injury extends to HNP at C5-6 and C6-7, central canal stenosis at C5-6 and C6-7, cervical radiculitis, and cervicgia was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Reversed and remanded.

The parties stipulated, in part, that: (1) the carrier has accepted a compensable injury of (date of injury), in the nature of a right knee sprain/strain, right knee posterior cruciate ligament (PCL) tear, right non-displaced lateral tibial plateau fracture, left tibia/fibula fracture, and cervical sprain/strain; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. G) as the designated doctor with regard to extent of injury, MMI, and IR; and (3) the claimant's statutory MMI date is March 30, 2018. The claimant testified that he was injured when he fell off the rig floor landing on the ground 13 feet below.

**MMI/IR**

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the

preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in part, that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. G examined the claimant on May 29, 2018, and certified that the claimant reached MMI on February 20, 2018, with a 7% IR for the carrier accepted compensable injuries. Using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), Dr. G assessed 5% impairment for the cervical spine placing the claimant in Diagnosis-Related Estimate (DRE) Category II: Minor Impairment and 2% for the right non-displaced lateral tibial plateau fracture per Table 64, page 3/85 of the AMA Guides. Dr. G assessed 0% impairment for the left knee. This certification of MMI/IR did not consider and rate central canal stenosis at C5-6 and C6-7, cervical radiculitis, HNP at C5-6 and C6-7, or cervicalgia.

Dr. G provided an alternate certification which rated the carrier accepted compensable injuries and all disputed injuries and that certification provided that the claimant had not reached MMI. A letter of clarification was sent to Dr. G on July 26, 2018, which informed Dr. G that the latest MMI date possible is March 30, 2018, and requested that Dr. G consider the statutory date and assign an IR in accordance with a clinical or statutory date of MMI. Dr. G provided a response dated July 31, 2018, and certified that the claimant had reached statutory MMI as of March 30, 2018, for the carrier accepted compensable injuries and all disputed injuries and assessed an IR of 7%.

The ALJ found that Dr. G's certification of a February 20, 2018, MMI date with a 7% IR is not contrary to the preponderance of the other medical evidence. However, as noted above the certification in which Dr. G certified the claimant reached MMI on February 20, 2018, did not consider and rate the entire compensable injury. Specifically, Dr. G did not consider in that certification the conditions of central canal stenosis at C5-6 and C6-7, cervical radiculitis, HNP at C5-6 and C6-7, or cervicalgia. Accordingly, the ALJ's determination that the claimant reached MMI on February 20, 2018, and that the claimant's IR is 7% is reversed.

(Dr. M), a treating doctor referral, examined the claimant on March 22, 2018, and certified that the claimant reached MMI on February 20, 2018, with a 12% IR. Dr. M

assessed 0% for the lumbar spine, placing the claimant in Lumbosacral DRE Category I: Complaints or Symptoms; 5% for the cervical spine, placing the claimant in Cervicothoracic DRE Category II: Minor Impairment; 7% for moderate PCL laxity per Table 64, and 0% for range of motion (ROM) of the right knee. Dr. M's worksheet indicates that the claimant's left knee had normal ROM. Dr. M assessed impairment for a lumbar sprain/strain which has not been determined to be part of the compensable injury. Accordingly, Dr. M's certification cannot be adopted.

(Dr. Go) performed a post-designated doctor required medical examination of the claimant on August 2, 2018, and certified that the claimant reached MMI on March 30, 2018, with a 17% IR. Dr. Go noted that the ROM of the left knee was within normal limits and assessed 0% for the left knee. Dr. Go assessed 10% impairment of the right knee for severe PCL laxity under Table 64, and 2% impairment under Table 64 for the non-displaced lateral tibial plateau fracture of the right lower extremity. Finally, Dr. Go assessed 5% for the claimant's cervical spine, placing him in Cervicothoracic DRE Category II for a total whole person impairment of 17%.

As previously noted in response to a letter of clarification, the designated doctor Dr. G certified that for the carrier accepted and disputed conditions the claimant reached MMI on March 30, 2018, with a 7% IR.

Since there is more than one MMI/IR certification in evidence that could be adopted, we do not consider it appropriate to simply render a decision regarding the MMI date and the IR. See Appeals Panel Decision (APD) 042405, decided November 17, 2004. Accordingly, we remand the case to the ALJ to make a determination on the issues of MMI and IR.

### **SUMMARY**

We reverse the ALJ's determination that the claimant reached MMI on February 20, 2018, and remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 7% and remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to determine the claimant's MMI date and IR that is consistent with the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision

and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge